IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

THURSDAY, THE 22ND MARCH 2007 / 1ST CHAITHRA 1929

WP(C).No. 9885 of 2006(S)

OA.548/2004 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
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PETITIONERS:
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1. **THE UNION OF INDIA, REPRESENTED BY ITS SECRETARY, DEPARTMENT OF POSTS, MINISTRY OF COMMUNICATIONS, NEW DELHI.**

2. **THE SUPERINTENDENT OF POST OFFICES, IDUKKI DIVISION, THODUPUZHA.**

3. **THE CHIEF POSTMASTER GENERAL KERALA CIRCLE, THIRUVANANTHAPURAM-1.**

4. **THE DIRECTOR GENERAL, DEPARTMENT OF POSTS, NEW DELHI.**

BY ADV. SRI.JOHN VARGHESE, ASSISTANT S.G.

RESPONDENT:

C. RAJU, C/O. C. CHELLAKAN NADAR, GDS MAIL DELIVERER, VAGAMON POST OFFICE (IDUKKI DIVISION), THODUPUZHA, RESIDING AT SANKUSERIYIL, KOLAHALAMEDU, VAGAMON P.O., IDUKKI DISTRICT.

BY ADV. SRI. O.V. RADHAKRISHNAN (SR.).

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/03/2007,THE COURT ON 22/03/2007 DELIVERED THE FOLLOWING:

W.P.(C). NO.9885/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE O.A. NO. 548/2004 OF THE C.A.T, ERNAKULAM DTD. 04/07/2004.

EXT.P.2: COPY OF THE REPLY STATEMENT FILED BY THE PETITIONERS HEREIN IN O.A. NO. 548/2004 DT. NIL.

EXT.P.3: COPY OF THE ORDER DTD. 08/12/2005 IN I.A. NO. 548/2004 OF THE CAT, ERNAKULAM.

EXT.P.4: COPY OF THE ORDER OF THE C.A.T. CHANDIGARH BENCH DTD. 26/05/2005 IN O.A. NO. 1033/PB/2003.

EXT.P.5: COPY OF THE RULE 3 OF GRAMIN DAK SEVAK (CONDUCT & EMPLOYMENT) RULES, 2001 DT. NIL.

//TRUE COPY//

prv.

J.B. Koshy & T.R. Ramachandran Nair, JJ.

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W.P.(C).NO.9885 of 2006-S

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Dated this the 22nd day of March, 2007

JUDGMENT

T.R.Ramachandran Nair, J.

The above writ petition is filed by the petitioners who are respondents in O.A. No.548/2004 before the Central Administrative Tribunal, Ernakulam Bench. The necessary facts for disposal of the writ petition shorn of unnecessary details, are the following:

2. The respondent filed the Original Application mainly claiming for absorption to a Group D post at least in the year 2002 based on seniority as per the recruitment rules. He joined the service as Extra Departmental Delivery Agent (EDDA for short) at Vagamon Post Office with effect from 31.12.1973. He belongs to OBC category. As per his representation dated 16.6.2002 (marked as A2 in the O.A.), he requested for selection to the cadre of Postman and in the alternative, to the post of Group D in an existing vacancy. He was informed by the second respondent in the application as per letter dated 17.7.2002 that the Postman examination was scheduled to be held on 29.9.2002 and that Group D recruitment will also be held shortly. Even though a test was conducted by the Department for

appointment to the category of Postman, no departmental candidates have come out successful and filling up of vacancies from GDS merit quota was kept in abeyance for want of clarification. Even though Group D posts remain unfilled, that was also not filled up.

3. The stand taken by the petitioners before the Tribunal was that the respondent's position in the gradation list of Gramin Dak Sevaks of Idukki Division is 54 and the selection to Group D post is done according to the provisions contained in Department of Posts (Group 'D' Posts) Recruitment Rules, 2002 for the vacancies approved by the Screening Committee. For the year 2002 out of two Group D vacancies, only one vacancy was approved by the Screening Committee for filling up and it was filled up by serial No.49 in the list. For the subsequent years 2003 and 2004, the Screening Committee has not approved any Group D vacancy for filling up in Idukki Division. They also contended that at present there are only two Group D vacant posts available in Idukki Division for which approval has been sought from the Screening Committee. It was contended that the applicant's case will be considered only when his turn comes according to the rules and also subject to availability of approved vacancies cleared by the Screening Committee.

4. After considering the various contentions raised by the parties and

the method of recruitment provided under the relevant recruitment rules, the Tribunal clearly found that going by the judgment in an identical case in O.A. NO.901/2003, the contentions raised by the petitioners are not sustainable. The Tribunal noted in paragrapy 10 of the order that notification dated 28.9.1990 which fixed an upper age limit of 50 for E.D. Agents for appointment as Group D was struck down already as per order in O.A.No.155/1995 which has become final. The Tribunal also referred to earlier judgments in O.A.Nos.239/1998 and 449/1998 which were the subject matter of O.P. No.25172/1998. The Tribunal held that the vacancy position that has been calculated by the petitioners is not in terms of the rules and instructions on the subject. There would have been one more vacancy in the year 2002 and the applicant would have come into zone of consideration if he was considered at the relevant point of time.

5. It is contended by the petitioners that the approval of the Screening Committee for filling up the vacancies is a must and without it, the petitioners were not in a position to make any regular appointment. We find that as recruitment rules do not provide for any such approval, the said contention was rightly rejected by the Tribunal. The contention raised by the petitioners that column 11 of the recruitment rules only provides for direct recruitment and not promotion, is also not correct. The method of

recruitment provided for in column 11 is clearly by way of promotion and not solely by direct recruitment. Hence, in that view of the matter also, the contention raised by the petitioners herein cannot be accepted. As rightly found by the Tribunal, the applicant had a right to be considered in a vacancy in the year 2002 and the matter was unduly delayed by the petitioners by not assessing the vacancies at the right time. The Tribunal was therefore right in issuing the directions assailed in this writ petition. The view taken by the Tribunal cannot be said to be perverse going by the findings rendered in regard to the number of vacancies and on the interpretation of the recruitment rules. Therefore, the said findings are not liable to be interfered with in a writ petition under Article 227 of the Constitution of India.

Hence, the writ petition is dismissed.

(J.B. Koshy, Judge.)

(T.R. Ramachandran Nair, Judge.)

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